

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )	
Implementation of Section 621(a)(1) of )	
the Cable Communications Policy Act of 1984 )	MB Docket No. 05-
311	
as amended by the Cable Television Consumer )	
Protection and Competition Act of 1992 )	

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**COMMENTS OF COUNTY OF CLARK, NEVADA**

These Comments are filed by the County of Clark, Nevada ("Clark County") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Clark County believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In Clark County, a cable television franchise is termed a "Cable Television Franchise Agreement." Clark County also has a cable ordinance that operates in conjunction with the franchise agreements. The franchise agreements and the cable ordinance will be collectively referred to as the "franchise" below.

**Cable Franchising in Our Community**

**Community Information**

Clark County is a county with a population of over 780,000 in the unincorporated areas of the County consisting of approximately 750,000 in the unincorporated portion of the Las Vegas Valley urban area ("urban area") and over 30,000 in the outlying areas ("rural area") of the County. Our franchised cable providers are Cox Communications in the urban area of the County, and Bluebird Communications, Charter Communications, CMA Cablevision, Eagle West Cable

and Rio Virgin Telephone and Cablevision in the rural areas. Clark County has negotiated cable franchises since 1981.

### **Our Current Franchises**

Our current franchises began and expire on the following dates:

<u>Cable Provider</u>	<u>July 1, 2005 Population</u>	<u>Cable Franchise Agreement Commenced</u>	<u>Expires</u>
Cox Communications (urban) Oct. 1, 2013	750,378	Oct. 1, 1998	
Bluebird Communications (rural) Oct. 13, 2011	1,697	Oct. 13, 2001	
Charter Communications (rural) Oct. 13, 2011	6,798	Oct. 13, 2001	
CMA Cablevision: (Laughlin, NV) (rural) 17, 2014	8,315	Aug. 3, 2004	Aug.
(Searchlight, NV) (rural) 20, 2010	1,100	Sep. 20, 2000	Sep.
Eagle West (rural) 19, 2010	237	Dec. 19, 2000	Dec.
Rio Virgin Telephone and Cablevision (rural) 2, 2009	1,211	Nov. 2, 1999	Nov.

At this time, we are not currently negotiating a franchise renewal with any incumbent providers or a new franchise with any other provider.

Our franchises require the cable operators to pay a franchise fee to Clark County in the amount of 5% of the cable operators' revenues less certain programming costs as allowed by Nevada state law. The revenues for franchise-fee purposes are calculated based on the gross revenues of the operators, in accordance with the Federal Cable Act.

Clark County requires the cable operator to provide capacity for public, educational and governmental ("PEG") access channels on the cable system, including certain analog and digital channels that are not required to be on the basic service tier but that are functionally equivalent to PEG channels. The franchises in the urban area of the County, including the unincorporated urban

area of the County and the incorporated cities in the urban area, require the capacity for 11 total PEG channels, including two government-access channels that have been activated, one additional activated government access channel used for public safety purposes (i.e., Fire Department training and briefing), two activated educational access channels, and six other PEG channels that have not yet been activated. The franchises in the rural areas of the County require the capacity for 1 PEG channel for local government and educational programming. An additional channel may be requested by the County if it is fully programmed and the provider has a total of 5,000 or more subscribers in the service area and a third maybe requested when there the number of subscribers reaches 30,000.

Our franchise does not require that our PEG channels be monetarily supported by the cable operator. In addition, Clark County budgets approximately \$600,000 per year for its government access channel out of its General Fund. These expenditures benefit both Clark County residents and the cable operator through better PEG programming.

Our franchises contain the following requirements regarding an emergency alert system ("EAS"): The cable operators shall maintain an EAS consistent with F.C.C. regulations, and such system shall allow a representative of Clark County to override the audio and to provide a video crawl on all channels of the cable systems, without the assistance of the operators, for emergency broadcasts in the event of a civil emergency. These EAS requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchises contain customer service obligations, based on F.C.C. regulations, by which we are able to help ensure that the cable operators are treating our residents fairly. The customer service obligations are enforceable through the assessment of liquidated damages pursuant to the franchise.

Our present franchises, like the original franchises, contain reasonable build schedules (including schedules for upgrading the cable system) that the cable operators had to meet to effectively serve our entire community.

Our franchises effectively require that the cable operators provide service to all areas of our community based on line-extension policies (i.e., extending service to new areas as long as there are at least 35 potential subscribers per mile for the requested extension).

In order to ensure that our residents have access to current technologies, our franchise in the urban area of the County contains the following system (upgrade) requirements: minimum bandwidth of 750 MHz, "fiber to the neighborhood" with an average of no more than 1,200 residents per node, and an activated two-way capability throughout the entire system. Such system allows the cable operator to

provide cable modem service throughout Clark County, and the operator recently began offering telecommunications services to Clark County residents.

Our franchises contain the following insurance and bonding requirements: \$2,000,000 in general liability and motor vehicle coverage, and a \$200,000 general performance bond.

Our franchises grant the cable operators access to the public rights-of-way and compatible easements for the purpose of providing cable television service. Apart from the franchises, the cable providers are required to obtain a permit from the appropriate municipal office before it may work in the public rights-of-way.

Our franchises provide for the following enforcement mechanisms by which we are able to ensure that the cable operators are abiding by their agreements: detailed auditing provisions concerning the calculation of franchise fees owed by the operators and liquidated-damages provisions for breaches of customer service standards in the franchises.

### **The Franchising Process**

The cable system serving the urban area of Clark County also serves four adjoining communities that worked together with Clark County in 1998 to simultaneously issue cable franchises for the cable operator. The joint negotiating process allowed the provider to quickly obtain essentially uniform franchises in all five communities, enabling it to serve a large region, while allowing each community to tailor its franchise to its unique needs in narrow areas.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act, it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties, the provisions in the franchise agreement function as contractual obligations upon both parties.

As a part of negotiating a franchise with Clark County, the cable operator is, of course, afforded all due process and statutory rights granted under the Federal Cable Act to protect the operator's interests. State and Federal law, as well as County policy, preclude the County from unreasonably denying a new cable franchise application, and the County can only deny the renewal of an existing franchise pursuant to the limited grounds set forth in U.S.C. Title 47.

## **Competitive Cable Systems**

Clark County has been approached by potential competitive cable providers in the past that have chosen not to proceed with obtaining a cable franchise. Clark County encourages competition and new services that will benefit its citizens and visitors and has never denied or attempted to deny a cable franchise to competitive providers. One of the rural service areas is served by two competing cable providers.

## **Conclusions**

The local cable franchising process functions well in Clark County. We are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights-of-way in a fair and evenhanded manner, that other users of the rights-of-way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in a manner that is in accordance with local requirements. Local cable franchising also ensures that Clark County's specific needs are met and that its residents are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Clark County therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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